

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

211

CWP-19214-2017

Date of Decision: 27.07.2023

Gurpreet Kaur

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. K.S. Sidhu, Advocate for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 17.08.2015 (Annexure P-19), whereby the claim of the petitioner for appointment as Clerk on compassionate ground, has been rejected.

2. The petitioner is a claimant for compassionate appointment on account of death of her father, who died while in service, on 09.08.2001. The mother of the petitioner submitted an application on 27.11.2001 for appointment of the petitioner under priority list instructions. The case of the petitioner was initially considered for the post of Constable but was denied appointment on the ground that she was not having the requisite height. The petitioner sent her willingness for the post of Clerk but her application remained pending and was ultimately rejected on 04.11.2011 on the premise that she does not possess the qualification for the post of Clerk, which had been revived by the State Government, vide its instructions dated 10.02.2009, whereby the requisite qualification for the post of Clerk was

enhanced to Graduation from class 10th/10+2. Further, 120 hours course of computer application was also added as a pre-condition qualification.

3. As has come on record, the application for appointment for the post of Clerk was submitted by the petitioner on 22.02.2002, the Home Department referred it to the Redeployment Cell on 05.06.2002 on account of non-availability of the post of Clerk in the Police Department and thereafter, the case remained pending with the said Cell for a long period upto 2011 without any reasons. It has also not come on record as to why her case was not considered under the existing regulations which required qualification only upto 10th/10+2. The denial has been communicated on 04.11.2011. She applied again as she had acquired qualification of graduation in 2012 but her case was again rejected on 17.08.2015 but this time for different reasons. The respondents stated that the petitioner was not eligible in terms of the Government instructions dated 21.11.2002 which did not allow a married female to be eligible for compassionate appointment. The petitioner got married in 2007 and thereafter, she got divorced in 2013. The respondents have now taken a ground that the petitioner having been married and later on divorced, would not fall within the definition of dependent family member. This Court is surprised and shocked by the manner in which the cases of compassionate appointments are dealt with by the Department. Different excuses are being taken to deny the rightful claim of the petitioner at the stage, when her father expired, she was an unmarried daughter. The State Government instructions dated 21.11.2002 provide that a dependent family member means as under:-

“Dependent Family Member means:-

(a) Spouse; or

(b) Son (including adopted son); or

(c) Unmarried Daughter (including adopted Daughter); or

(d) Unmarried Brother or Unmarried Sister in the case of unmarried Govt. Servant-who was wholly dependent on the Govt. Servant/member of the Armed Forces at the time of death in harness.”

4. From the above, it is apparent that at the time of submitting of application, the petitioner was a dependent. The question arises as to whether an unmarried daughter should remain unmarried for the time till she is offered appointment. Such cannot be the reasons or intention of the rule making Authority. That apart, this Court also noticed a judgment passed by this Court in the case of **‘Amarjit Kaur Vs. State of Punjab and another’**, **2020(3) RCR(Civil) 301**, wherein, a Co-ordinate Bench of this Court reached to the conclusion that “a married daughter, who is living with her father along with her husband and children and after death of her father, would be treated as totally dependent. The LPA preferred by the State i.e. **LPA No.462 of 2021, decided on 25.01.2023**, was upheld the aforesaid view. In the case of **‘Jaspreet Kaur Vs. State of Punjab and others’**, passed in **CWP-24591-2021, decided on 24.07.2023**, this Court too has held the similarly situated lady applicant to be eligible for compassionate appointment. The Single Bench of Rajasthan High Court in the case of **‘Smt. Shobha Devi Vs. Jodhpur Vidhyut Vitran Nigam Limited and others’**, passed in **CWP-11993-2017, decided on 12.01.2022** has held that a view of daughter after marriage, no longer being a part of her father’s household, is an outdated view and mind set.

5. Be that as it may, it is apparent that in the present case, the petitioner was unmarried at the time of submitting of her application for appointment on the post of Clerk i.e. 22.02.2002. There has been an inordinate delay in considering her application by the respondents and it was wrongfully rejected on 04.11.2011 without adverting to the Rules as they

were existing at the time of submitting of the application. The petitioner was required to be offered appointment at that very stage. The respondents have not explained the reasons for not offering her appointment from 2002 upto the date when they rejected her application on 04.11.2011. Keeping an application pending for years together reflects the attitude of the Appointing Authority and it appears that the application was kept pending for extraneous purposes and considerations. Such action of the respondents is deprecated by this Court.

6. While it is true that no person has an absolute right for seeking appointment, however, if there is a policy laid down by the State and is being applied too, all the persons who are dependents of the deceased Government servants dying by any harness, they will have to be treated similarly and there can be no discrimination and deliberate delay in depriving the said person from his/her rightful claim.

7. Keeping in view the aforesaid findings and the conclusion drawn by the Co-ordinate Bench of this Court as well as Division Bench of this Court, the order dated 17.08.2015 (Annexure P-19) is set aside and the petition deserves to be allowed.

8. Accordingly, the present petition is allowed. The respondents are directed to consider the case of the petitioner for appointment on compassionate ground forthwith and the appointment shall relate back from the period, the petitioner had submitted application for the post of Clerk i.e. 22.02.2002. However, the benefit for the intervening period shall be purely notional. Compliance be made within a period of three months from today.

27.07.2023

D.Bansal

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No